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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,424	07/27/2000	Mamoru Uchida	1403-0203P	2636

7590

06/12/2003

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EXAMINER

MAKI, STEVEN D

ART UNIT

PAPER NUMBER

1733

14

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/627,424

Applicant(s)

UCHIDA ET AL.

Examiner

Steven D. Maki

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see advisory action attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the <sup>response</sup> proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

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Advisory Action Attachment

The obvious type double patenting rejection stands since no terminal disclaimer has been received.

Applicant's arguments filed 5-28-03 have been considered but are not persuasive for the reasons given in the last office action and in view of the following:

The declaration by Minagoshi under 37 CFR 1.132 filed 5-28-03 has been considered. However, the declaration by Minagoshi under 37 CFR 1.132 filed 5-28-03 is insufficient to overcome the rejection of claim 1 based upon Japan '204 in view of Japan '603 and Japan '214 and optionally further in view of Lucas et al as set forth in the last Office action because: **the results therein are not commensurate in scope with claim 1.** **First:** The results in Minagoshi's declaration are for a tire having a tread, which was made by rolling a specified rubber composition by a calendar roll and repeating folding it. The same is true for example 1 in the specification since, as noted in table 1, the tread of example 1 was made by the method of figure 2 which includes calendaring and folding. Claim 1 fails to require the tread to have been made by rolling a specified rubber composition by a calendar roll and repeating folding it. **Second:** The results in Minagoshi's declaration fail to show unexpected results for the entire range of average fiber length of 0.1 to 5 mm. Example 1 in the specification (having the braking performance on ice of 125 and abrasion resistance of 100) and experiment 2 in Minagoshi's declaration (having the braking performance of 92 and abrasion resistance of 99) differ in only one aspect. The average fiber length in example 1 (invention example) is 0.5 mm whereas the average fiber length in experiment 2 (comparative

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example) is 3.0 mm. Since the average fiber length of 0.5 mm in example 1 (invention example) and the average fiber length of 3 mm in experiment 2 (comparative example) fall within range of 0.1 to 5 mm in claim 1, it is not seen how the results of example 1 and experiment 2 can be used to show unexpected results for the tire of claim 1.

Applicant comments that the glass or carbon fibers are broken into a suitable short length during the process of mixing the rubber. Page 5 of response filed 5-28-03. Claim 1 fails to require the tread to have glass or carbon fibers, which were broken into a suitable short length during mixing.

Applicant's argument that Japan '204 does not suggest breaking fibers into a suitable short length during the process of mixing rubber (page 10 of response filed 5-28-03) is not commensurate in scope with claim 1 and is therefore not persuasive. Claim 1 fails to require the tread to have fibers, which were broken into a suitable short length during mixing.

Applicant's argument that the fibers in Japan '214 and Lucas et al are not broken into suitable short length during the process of mixing rubber (pages 10-11 of response filed 5-28-03) is not commensurate in scope with claim 1 and is therefore not persuasive. Claim 1 fails to require the tread to have fibers, which were broken into a suitable short length during mixing.

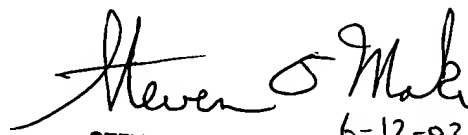
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is 703-308-2068. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on (703) 308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Steven D. Maki  
June 12, 2003

  
STEVEN D. MAKI  
PRIMARY EXAMINER  
~~GROUP 1900~~  
AU 1733  
6-12-03